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No. 03-750

In the Supreme Court of the United States

GARY SHERWOOD SMALL, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Section 922(g)(1) of Title 18, United States Code, renders it "unlawful for any person * * * who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year" to possess a firearm. The question presented is:

Whether the statutory reference to convictions entered in "any court" includes convictions entered by the courts of foreign countries.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 333 F.3d 425. The district court's opinion (Pet. App. 8a-40a) is reported at 183 F. Supp. 2d 755.

JURISDICTION

The court of appeals entered its judgment on June 23, 2003. A petition for rehearing was denied on July 23, 2003 (Pet. App. 41a-42a). On October 15, 2003, Justice Souter extended the time within which to file a petition for a writ of certiorari to and including November 20, 2003, and the petition was filed on November 17, 2003. The petition for a writ of certiorari was granted on March 29, 2004. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant statutory and regulatory provisions are reproduced in an appendix to this brief.

STATEMENT

A federal grand jury returned a four-count indictment against petitioner that charged him with making a false statement intended or likely to deceive a licensed firearms dealer with respect to the sale of a firearm, in violation of 18 U.S.C. 922(a)(6), and with possessing an SWD Cobray pistol, a Browning .380 caliber pistol, and firearm ammunition, in or affecting interstate commerce, while having been previously convicted of an offense punishable by imprisonment for a term exceeding one year, each in violation of 18 U.S.C. 922(g)(1). Following a conditional plea of guilty, petitioner was convicted in the United States District Court for the Western District of Pennsylvania on one count of possessing an SWD Cobray pistol, in violation of 18 U.S.C. 922(g)(1). The district court sentenced petitioner to eight months of imprisonment, to be followed by three years of supervised release. The court of appeals affirmed.

1. In December 1992, petitioner shipped from the United States to Osaka, Japan, via cargo airplane, a 19-gallon electric water heater, ostensibly as a present for "his Papa-san in Okinawa." 3 Pet. C.A. App. 507-510, 521-525, 598. Small had sent two other water heaters to Japan earlier that year. *Id.* at 525-527. Considering it unusual for an individual to "go out of his way to bring a water tank from the U.S. as a present," *id.* at 598-599, Japanese Customs officials X-rayed the water heater upon its arrival and discovered firearms packaged inside. When petitioner appeared at the airport to

accept delivery, he confirmed that the water heater was his, whereupon Customs officials served him with a search warrant. Upon opening the water heater, Customs officials discovered two rifles wrapped in black tape, eight pistols, and 410 ammunition shells. *Id.* at 603-604.

The Japanese government indicted petitioner on multiple counts of violating Japan's Guns and Knives Control Law, the Explosives Control Law, and the Customs Law. 2 Pet. C.A. App. 261a-262a. His criminal trial before the Naha District Court in Japan was public and was conducted before three impartial judges. Petitioner was present, the proceedings were translated, and he was afforded the assistance of counsel, who cross-examined witnesses and made a closing argument.[1] The judges also actively questioned the prosecution's witnesses. See, *e.g.*, 3 Pet. C.A. App. 610-611, 685-688. Following trial, petitioner was convicted on all counts. Pet. App. 2a. Each offense was punishable by imprisonment for a term exceeding one year. *Ibid.* Petitioner received a sentence of five years of imprisonment, to be followed by eighteen months of parole. *Id.* at 10a n.3.[2]

2. Within a week of completing parole for his Japanese convictions, petitioner purchased an SWD Cobray nine-millimeter handgun from a firearms dealer in Pennsylvania. Pet. App. 2a n.1; 1 Pet. C.A. App. 47a-51a; Govt. C.A. Br. 6. Federal law required petitioner

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[1] 3 Pet. C.A. App. 554, 562, 580, 587-589, 596, 608-610, 614-615, 621, 626, 631-635, 647-648, 652, 656, 674, 680, 684-685, 696, 699, 704, 711-712; Gov't C.A. Br. 41.

[2] An English translation of the transcript of the entire Japanese trial was submitted to the district court, Pet. App. 29a, and is included in the record, see 2 & 3 Pet. C.A. App. 251a-713a.

to provide truthful background information on a federal form before making that purchase. 18 U.S.C. 922(s)(1)(A)(i)(I) and (3)(B). In completing the form, petitioner answered "no" to the question "[h]ave you been convicted in any court of a crime for which the judge could have imprisoned you for more than one year, even if the judge actually gave you a shorter sentence?" Gov't C.A. Br. 6. A subsequent search, pursuant to warrant, of petitioner's apartment uncovered a Browning .380 caliber pistol and more than 300 rounds of ammunition. 1 Pet. C.A. App. 50a-51a.

3. On August 30, 2000, a federal grand jury in the Western District of Pennsylvania returned a four-count indictment against petitioner, charging him with one count of making a false statement intended or likely to deceive a licensed firearms dealer, in violation of 18 U.S.C. 922(a)(6), and with three counts of possessing firearms or ammunition in or affecting interstate commerce while having been previously convicted in Japan of an offense punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. 922(g)(1). See Pet. App. 8a-9a; Pet. C.A. App. 47a-51a.

Petitioner moved to dismiss the indictment on the ground that Section 922(g)(1)'s ban on the possession of firearms by persons convicted "in any court," as well as Section 922(s)(3)(B)'s background question about prior convictions "in any court," refer to domestic convictions only. Pet. App. 10a. Petitioner also argued that his Japanese convictions had been obtained through fundamentally unfair procedures. *Ibid.*

The district court denied the motion. Pet. App. 8a-40a. The district court first ruled that the phrase "any court" in Section 922(g)(1) embraced all courts, domestic and foreign. *Id.* at 11a-16a. The court reasoned that "'[a]ny' court means any court and there is nothing

in the plain and unambiguous language of Section 922 indicating that Congress intended to exclude foreign convictions from such a broad term." *Id.* at 16a.

The district court also rejected petitioner's claim that his convictions were the product of fundamentally unfair proceedings in Japan. Pet. App. 29a-39a. The court first noted that the Japanese Constitution grants criminal defendants many of the same rights and protections they enjoy in this country. *Id.* at 30a-32a. The court then rejected petitioner's objections to the trial proceedings, noting both that petitioner failed to identify any actual prejudice arising from the alleged errors and that there was "overwhelming evidence" against him. *Id.* at 39a; see *id.* at 33a-38a. The court concluded that petitioner's convictions were "sufficiently consistent with our concepts of fundamental fairness * * * that we may have confidence in the reliability of the fact-finding process." *Id.* at 39a.

4. The court of appeals affirmed. Pet. App. 1a-7a. Agreeing with decisions of the Fourth and Sixth Circuits, the court concluded that "foreign convictions, generally, can count as predicate offenses for the purposes of § 922." *Id.* at 3a n.2 (citing *United States* v. *Atkins* 872 F.2d 94 (4th Cir.), cert. denied, 493 U.S. 836 (1989), and *United States* v. *Winson*, 793 F.2d 754 (6th Cir. 1986)).

The court of appeals also rejected petitioner's claim that the Japanese proceedings were fundamentally unfair. Pet. App. 4a-6a. The court first held that, before recognizing a foreign conviction as a predicate offense under Section 922(g), the court "must satisfy itself that the foreign conviction comports with our notions of fundamental fairness as required by the Due Process Clause." *Id.* at 4a. To that end, the court of appeals applied the factors for recognition of foreign

judgments identified by the Restatement (Third) of Foreign Relations Law of the United States (1987) (Restatement):

> (1) A court in the United States may not recognize a judgment of the court of a foreign state if:
>
> (a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law; or
>
> (b) the court that rendered the judgment did not have jurisdiction over the defendant in accordance with the law of the rendering state and with the rules set forth in § 421.
>
> (2) A court in the United States need not recognize a judgment of the court of a foreign state if:
>
> (a) the court that rendered the judgment did not have jurisdiction of the subject matter of the action;
>
> (b) the defendant did not receive notice of the proceedings in sufficient time to enable him to defend;
>
> (c) the judgment was obtained by fraud;
>
> (d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought;
>
> (e) the judgment conflicts with another final judgment that is entitled to recognition; or
>
> (f) the proceeding in the foreign court was contrary to an agreement between the parties to submit the controversy on which the judgment is based to another forum.

1 Restatement § 482, at 604. Applying that framework, the court of appeals concluded that "there were no grounds for non-recognition of the Japanese conviction as the predicate offense to [petitioner's] § 922(g)(1) conviction." Pet. App. 6a.[3]

SUMMARY OF ARGUMENT

The plain text of Section 922(g)(1) makes convictions entered in foreign courts proper predicates for the federal bar on firearms possession. Congress directed that any person who has been convicted in "any court" of a crime punishable by more than one year in prison may not possess firearms, and the ordinary understanding of "any court" includes foreign courts. The natural meaning of the modifier "any" denotes the comprehensive inclusion of all courts capable of imposing the requisite convictions. In addition, as this Court has repeatedly recognized, Congress chose the language of Section 922(g)(1) with care and intended it to mean exactly what it says. Congress's choice of the unqualified "any court" language in Section 922(g)(1) stands in sharp contrast to references elsewhere in the gun control law that are expressly limited to "United States" and "State" courts. Furthermore, Congress has twice amended the gun control law to delete language limiting disqualifying convictions to those entered by courts of the United States or the States.

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[3] Petitioner has not sought this Court's review of that portion of the court of appeals' judgment concluding that his convictions were obtained through fundamentally fair procedures. Pet. i, 3 n.1; Pet. Br. 4 n.3.

The structure of the gun control law and the specialized pattern of legislative usage of the phrase "conviction in any court" underscore that Congress meant "any" to encompass all convictions for qualifying offenses, whether foreign or domestic. Other provisions of the gun control law evidence that Congress was specifically concerned with the international and cross-border trafficking of firearms, as well as with keeping guns out of the hands of persons if the domestic or foreign consequences of their conduct renders their possession of firearms an unacceptable risk to the American public. Moreover, a review of federal law reveals that Congress uses the phrase "conviction in any court" sparingly, reserving it for contexts, such as the possession of biological weapons or explosive materials, where recognizing convictions entered by foreign courts makes sense and where ignoring those convictions could have dire consequences.

In addition, excluding foreign convictions would frustrate the central purpose of Section 922(g)(1)'s prohibition on the possession of firearms. Congress enacted that prohibition to keep firearms out of the hands of potentially dangerous persons—those whose past conduct evidenced that their possession of firearms could pose a risk to public safety. That threat does not dissipate when those individuals cross the border. A foreign murderer is just as dangerous as a domestic one.

At bottom, petitioner's argument is that "any" should not mean "any" because that reading might produce occasional anomalies in practice and because some foreign court systems employ criminal procedures less protective of defendant's rights than the United States does. But, while giving "any court" its natural reading as including foreign courts could result in the disparate

coverage of those convicted of certain business crimes depending on the locus of their misconduct, worse anomalies arise under petitioner's reading of the statute. Petitioner would allow foreign murderers, rapists, and armed robbers to purchase and possess as many firearms as they want, while those convicted domestically of mailing a lottery ticket, 18 U.S.C. 1302, could not. Petitioner's position also would require the Court to conclude that, while Congress sought to curb importers', manufacturers', and dealers' trafficking of firearms to terrorists, Congress meant to impose no bar on the domestic acquisition and possession of firearms by convicted terrorists themselves. In any event, legislating necessarily entails line-drawing. A criminal defendant's ability to hypothesize unusual applications of the law—applications that are not remotely implicated in his case—provides no sound basis for ignoring explicit statutory text.

Second, attaching domestic consequences to the *fact* of a foreign conviction is not unusual and it does not require that the foreign penal system mirror the constitutional processes afforded criminal defendants in the United States. As the Court has recognized, Section 922(g)(1) is, in essence, a civil firearms disability that is enforced through the criminal system. The fact of a conviction is enough to trigger that disability, regardless of whether the processes used to obtain the conviction comport with constitutional dictates, because the fact of conviction alone is a reasonable proxy for a heightened risk arising from the possession of firearms. The Court held as much in *Lewis* v. *United States*, 445 U.S. 55 (1980), when it ruled that state convictions may support a Section 922(g)(1) prosecution regardless of whether they are susceptible to collateral attack as unconstitutional. If funda-

mentally unfair and unconstitutional state court convictions can provide a predicate for Section 922(g)(1)'s firearms bar, nothing in law or logic supports ignoring petitioner's fundamentally fair conviction in Japan.

ARGUMENT

THE FEDERAL PROHIBITION ON THE POSSESSION OF FIREARMS BY PERSONS CONVICTED IN "ANY COURT" APPLIES TO PERSONS CONVICTED OF CRIMES IN FOREIGN COURTS

A. The Natural Meaning Of "Any Court" Includes Foreign Courts

Determining whether Section 922(g)(1)'s prohibition on the possession of firearms by persons convicted in "any court" reaches convictions in foreign courts "begins where all such inquiries must begin: with the language of the statute itself." *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989); see also *Lewis* v. *United States*, 445 U.S. 55, 60 (1980) ("[I]n any case concerning the interpretation of a statute the 'starting point' must be the language of the statute itself.") (citations omitted).

1. The natural meaning of "any court" includes foreign courts because "any" is an all-encompassing and deliberately inclusive word that reaches all members of a class. In construing a parallel provision of the same gun control statute at issue here, the Omnibus Crime Control and Safe Streets Act of 1968 (1968 Omnibus Act), Pub. L. No. 90-351, 82 Stat. 226, this Court held that, "[r]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U.S. 1,

5 (1997) (quoting *Webster's Third New Int'l Dictionary* 97 (1976)) (construing 18 U.S.C. 924(c)(1)).[4]

Section 922(g)(1) thus "could not be more plain," *Lewis*, 445 U.S. at 65, in its intent to cover convicted felons broadly without geographic limitation. In *Lewis*, in construing a parallel prohibition in Title VII of the 1968 Omnibus Act on the possession of firearms by "any person * * * who has been convicted" of a felony, 18 U.S.C. App. 1202(a)(1) (1976), the Court stressed that the prohibition "is directed unambiguously at any person who 'has been convicted,'" regardless of whether their convictions were subject to collateral attack. 445 U.S. at 60. Here, as in *Lewis*, "[n]o modifier is present,

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[4] See also *Department of Housing & Urban Dev.* v. *Rucker*, 535 U.S. 125, 130-131 (2002) ("Congress' decision not to impose any qualification in the statute, combined with its use of the term 'any' to modify 'drug-related criminal activity,' precludes any knowledge requirement."); *Brogan* v. *United States*, 522 U.S. 398, 400-401 (1998) ("any false, fictitious or fraudulent statements" includes false statements of all kinds and is not restricted to such statements "that pervert governmental functions"); *United States* v. *Turkette*, 452 U.S. 576, 580-581 (1981) ("any enterprise" includes both legitimate and illegitimate enterprises); *United States* v. *Atkins*, 872 F.2d 94, 96 (4th Cir.) (in Section 922(g)(1), "'[a]ny' is hardly an ambiguous term, being all inclusive in nature"), cert. denied, 493 U.S. 836 (1989); 1 *The Oxford English Dictionary* 378 (1933) ("any" defined as "indifference as to the particular one or ones that may be selected"; embracing all "no matter which" and "of whatever kind"). Petitioner's reliance (Br. 22-23) on *Nixon* v. *Missouri Municipal League*, 124 S. Ct. 1555 (2004), misses the mark. There, the Court gave the statutory language a particularly narrow construction because the legislation "threaten[ed] to trench on the States' arrangements for conducting their own governments," and thus Congress was required to express its intent with particular clarity. *Id.* at 1565 (citing *Gregory* v. *Ashcroft*, 501 U.S. 452 (1991)). No clear-statement rule applies in this context.

and nothing suggests any restriction on the scope of" the phrase "any court" that would limit its reference to domestic courts. *Ibid.* Likewise, in *Barrett* v. *United States*, 423 U.S. 212 (1976), the Court concluded that the same provision at issue here—then codified as 18 U.S.C. 922(h) (1970)—was "directed unrestrictedly at the felon's receipt of any firearm that 'has been' shipped." 423 U.S. at 216. That unqualified statutory language, the Court held, "is without ambiguity." *Ibid.*; see also *Gonzales*, 520 U.S. at 5; *Dickerson* v. *New Banner Inst., Inc.*, 460 U.S. 103, 111 (1983).[5]

2. Congress's use of the expansive phrase "any court" in Section 922(g)(1) contrasts with other parts of the same law that are limited to convictions, prosecutions, or prohibitions under state or federal law. See, *e.g.*, 18 U.S.C. App. 1202(a)(1) (1970) (banning possession, receipt, or transport of a firearm by any person who "has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony") (repealed by the 1986 Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104(b), 100 Stat. 459).[6]

[5] For that same reason, courts have held that Section 922(g)(1)'s reference to "any court" is not limited to Article III courts and, in fact, includes military courts. See *United States* v. *Martinez*, 122 F.3d 421, 424 (7th Cir. 1997); *United States* v. *MacDonald*, 992 F.2d 967, 969-970 (9th Cir. 1993); cf. *United States* v. *Lee*, 428 F.2d 917, 920 (6th Cir. 1970), cert. denied, 404 U.S. 1017 (1972).

[6] See also 18 U.S.C. 921(a)(15) (defining a "fugitive from justice," who is proscribed from possessing firearms, 18 U.S.C. 922(g)(2), as "any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony"); 18 U.S.C. 921(a)(20) (excluding certain "Federal or State offenses" from the definition of "crime punishable by imprisonment for a term exceeding one year"); 18 U.S.C. 921(a)(33)(A) (defining a "misdemeanor crime of domestic violence" by reference to "Federal or State law"); 18 U.S.C. 924(e)(2) (defining a "serious drug offense," which can trigger an enhanced sentence, by reference to identified federal laws or "State law").

That legislative pattern demonstrates that, when Congress wishes to restrict the gun control law's operation to state and federal crimes, it says so explicitly.

The absence of similar narrowing language in Section 922(g)(1) underscores Congress's intent to reach all convictions, whether foreign or domestic. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U.S. 16, 23 (1983). The Court has repeatedly invoked that principle of statutory construction to interpret parallel provisions of the gun control law. See *Gonzales*, 520 U.S. at 5; *Custis* v. *United States*, 511 U.S. 485, 492 (1994) (interpreting 18 U.S.C. 924(e)); *Barrett*, 423 U.S. at 217.

3. This Court has long recognized that Congress, in Section 922(g), "was reaching far and was doing so intentionally." *Dickerson*, 460 U.S. at 116. In *Barrett*, *supra*, the Court noted the detailed precision with which Congress crafted the provision containing the forerunner to Section 922(g). See 423 U.S. at 216-217. "Congress knew the significance and meaning of the language it employed" in Section 922(g) in particular. *Id.* at 217. In fact, "[i]t is obvious" that the language employed "throughout * * * [was] chosen with care," and that the provisions represented "a carefully constructed package of gun control legislation." *Scarborough* v. *United States*, 431 U.S. 563, 570 (1977); see

also *Dickerson*, 460 U.S. at 116. Thus, by all indications, Congress's unqualified prohibition on the possession of firearms by persons who have been convicted "in any court" "means exactly what it says." *Barrett*, 423 U.S. at 216 (finding coverage of intrastate acquisitions of firearms previously transported in interstate commerce). "There is no indication in either the committee reports or in the congressional debates that the scope of the statute was to be in any way restricted." *Huddleston* v. *United States*, 415 U.S. 814, 825 (1974).

4. Finally, the natural understanding of "any court" is reflected in how the law has been interpreted and administered by those charged with its day-to-day enforcement. Congress charged the Secretary of the Treasury (now, the Attorney General) with issuing "such rules and regulations as are necessary to carry out the provisions of" Section 922 and the companion sections of the gun control law. 18 U.S.C. 926(a). That authority was delegated to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). See 37 Fed. Reg. 11,696 (1972); 28 C.F.R. 0.133.[7] In 1987, ATF promulgated a regulation that interpreted the phrase "crime punishable by imprisonment for a term exceeding 1 year" to include "[a]ny Federal, State or foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year." 27 C.F.R. 478.11; see 52 Fed. Reg. 2048 (1987).[8]

[7] The Homeland Security Act of 2002, Pub. L. No. 107-296, § 1111(c)(1) and (2), 116 Stat. 2135, transferred, with certain exceptions not relevant here, the "authorities, functions, personnel, and assets" of ATF from the Department of the Treasury to the Department of Justice.

[8] Petitioner's reliance (Br. 36) on a 30-year-old unpublished memorandum from ATF's Technical Division, which suggested that foreign convictions are not covered, is misplaced. That purely internal document, unlike the regulation cited above, did not purport to provide to the public an official interpretation of the statute by ATF. See *United States* v. *Winson*, 793 F.2d 754, 758-759 & n.4 (6th Cir. 1986).

More recently, the National Instant Criminal Background Check System, a computerized system designed to search criminal record systems and identify individuals who are disqualified from receiving or possessing firearms, has begun to implement that interpretation on a practical level. The system includes the records of the National Crime Information Center and the Interstate Identification Index. FBI, Dep't of Justice, *National Instant Criminal Background Check System* (Jan. 2004). While the coverage is far from comprehensive, those systems include some Canadian, British, German, and Italian criminal history records. And as computerization expands worldwide, the number of foreign conviction records included in the system will expand. Furthermore, whenever a background check is run on an alien, the system automatically initiates a search of the records of the Department of Homeland Security's Immigration and Customs Enforcement, which may include information about foreign criminal convictions, see 8 U.S.C. 1101(a)(43), 1158(b)(2)(A)(iii), 1182(a)(2)(A)(i) (II), 1231(b)(3)(B)(iii).

B. Section 922(g)(1)'s Purpose Of Keeping Firearms Out Of The Hands Of Potentially Dangerous Persons Requires The Recognition Of Foreign Convictions

The "obvious breadth of the language" employed by Congress comports with Congress's "expansive legislative approach" to the "problem of firearm abuse by felons." *Lewis*, 445 U.S. at 61. Congress intended "to impose a firearms disability on *any* felon based on the

fact of conviction." *Id.* at 62 (emphasis added); see *id.* at 64. Accordingly, in enacting Section 922(g)(1) and its counterpart provisions of the gun control law, "Congress sought to rule broadly—to keep guns out of the hands of those who have demonstrated that they may not be trusted to possess a firearm without becoming a threat to society." *Dickerson*, 460 U.S. at 112 (internal quotation marks and citation omitted). Indeed, "[t]he principal purpose of the federal gun control legislation * * * was to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.'" *Huddleston*, 415 U.S. at 824.[9]

[9] See also *Caron* v. *United States*, 524 U.S. 308, 315 (1998) ("Congress meant to keep guns away from all offenders who, the Federal Government feared, might cause harm, even if those persons were not deemed dangerous by States."); *Dickerson*, 460 U.S. at 119 ("Congress obviously determined that firearms must be kept away from persons, such as those convicted of serious crimes, who might be expected to misuse them."); *Scarborough*, 431 U.S. at 573 (noting congressional purpose to keep firearms away from those "whose prior behaviors have established their violent tendencies") (quoting 114 Cong. Rec. 14,773-14,774 (1968) (Sen. Long)); 114 Cong. Rec. at 16,298 (Rep. Pollock) ("The overall thrust is to prohibit possession of firearms by criminals or other persons who have specific records or characteristics which raise serious doubt as to their probable use of firearms in a lawful manner."); *id.* at 13,220 (Sen. Tydings) (law is concerned with "any person who has a criminal record"); *id.* at 14,773 (Sen. Long) (law is concerned with "persons who, by their actions, have demonstrated that they are dangerous, or that they may become dangerous"); *id.* at 21,784 (Rep. Celler) ("This bill seeks to maximize the possibility of keeping firearms out of the hands of such persons."); see generally Tracey A. Basler, *Does "Any" Mean "All" or Does "Any" Mean "Some"? An Analysis of the "Any Court" Ambiguity of the Armed Career Criminal Act and Whether Foreign Convictions Count as Predicate Convictions*, 37 New Eng. L. Rev. 147 (Fall 2002).

The prohibition of firearms possession by persons who have been convicted of serious crimes abroad directly advances Congress's legislative effort to stem the "general availability [of firearms] to those whose possession thereof was contrary to the public interest," *Huddleston*, 415 U.S. at 824, and to keep "these lethal weapons out of the hands of criminals * * * and other persons whose possession of them is too high a price in danger to us all to allow," *id.* at 825 (quoting 114 Cong. Rec. 13,219 (1968) (Sen. Tydings)). Whether entered abroad or domestically, a criminal conviction for a felony serves as a reasonable indication that the person is "too much of a risk to be allowed firearms privileges." *Dickerson*, 460 U.S. at 116; see *id.* at 120 ("[S]uch convictions provide a convenient, although somewhat inexact, way of identifying 'especially risky people.'") (quoting *United States* v. *Bass*, 404 U.S. 336, 345 (1971)). "Congress could rationally conclude that any felony conviction, even an allegedly invalid one, is a sufficient basis on which to prohibit the possession of a firearm." *Lewis*, 445 U.S. at 66. The same is true of a criminal conviction entered by a foreign government.

In light of Congress's broad public-safety purpose, this Court has construed parallel provisions of the gun control law expansively to reach (i) "*all* types of sales or dispositions," *Huddleston*, 415 U.S. at 825 (emphasis added); (ii) *all* convictions, regardless of whether they are subject to collateral attack or expungement, *Lewis*, 445 U.S. at 60-61; *Dickerson*, 460 U.S. at 119-120; (iii) *all* possible manifestations of "convicted" status, including guilty pleas, *Dickerson*, 460 U.S. at 114; (iv) *all* terms of imprisonment, whether state or federal,

Gonzales, 520 U.S. at 5-8; (v) *all* purchases of firearms, even if not directly in interstate commerce, *Barrett*, 423 U.S. at 216-217; (vi) *all* acts of possession of firearms, even if not directly in interstate commerce, *Scarborough*, 431 U.S. at 571; and (vii) *all* convictions, even if the defendant had his civil rights restored under the law of another jurisdiction, *Beecham* v. *United States*, 511 U.S. 368, 372-373 (1994); see also *Caron* v. *United States*, 524 U.S. 308, 314-316 (1998) (state law authorization to possess rifles or shotguns insufficient). Congress's deliberate choice of the phrase "any court" should be afforded a similarly comprehensive scope, in accord with Congress's unqualified purpose of "deny[ing] *every* assassin, murderer, thief and burglar of the right to possess a firearm in the future." *Lewis*, 445 U.S. at 63 (quoting 114 Cong. Rec. at 14,773 (Sen. Long)) (emphasis added).

C. The Structure And Context Of The Gun Control Law Confirm That "Any Court" Includes Foreign Courts

1. The overall statutory context and structure confirm that Congress's effort to restrict access to firearms by potentially dangerous persons was intended to take into account the risk evidenced by individuals' conduct abroad. In addition to prohibiting the possession and receipt of firearms by felons, Section 922(g) bars aliens who are "illegally or unlawfully in the United States" or here on a non-immigrant visa, and individuals who have renounced their United States citizenship from possessing, receiving, or transporting firearms. 18 U.S.C. 922(g)(5) and (7). Those categories demonstrate Congress's awareness of the risks posed by the international fluidity of gun purchases and transfers and the dangers posed by individuals coming

into the United States from abroad and purchasing firearms.[10]

In addition, in defining the importers, manufacturers, and dealers whose activities are covered by the Act and who are subject to its criminal prohibitions, Congress made it easier to establish coverage for "a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism." 18 U.S.C. 921(a)(22); see also 18 U.S.C. 921(a)(21). Congress then defined "terrorism" as:

> activity, directed against United States persons, which—
>
> (A) is committed by an individual who is not a national or permanent resident alien of the United States;
>
> (B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

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[10] That the dangers posed by individuals who engage in gun trafficking across national boundaries was a focus of Section 922 is documented by the fact that Section 922 references "foreign commerce" 23 different times and "importer" 34 times. See also 18 U.S.C. 924(m) (2000), as amended by Pub. L. No. 108-174, § 1(2), 117 Stat. 2481 (2003); 1968 Omnibus Act, Pub. L. No. 90-351, § 901(a)(1) and (7), 82 Stat. 225, 226 (congressional finding that "there is a widespread traffic in firearms moving in or otherwise affecting interstate or foreign commerce," and that "the United States has become the dumping ground of the castoff surplus military weapons of other nations"); cf. *United States* v. *Kole*, 164 F.3d 164, 175 (3d Cir. 1998) ("We do not think that Congress enacted a law that was intended to reach persons involved in international drug trafficking and then limited enhanced penalties to those persons who had previously been convicted in a court in the United States."), cert. denied, 526 U.S. 1079 (1999).

(C) is intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

18 U.S.C. 921(a)(22).[11] This provision makes explicit Congress's intent to regulate and proscribe the firearms activities of persons within the United States based on their criminal conduct and the consequences of their conduct outside the United States. In light of Congress's manifest concern with the transnational threat of gun trafficking, Section 922(g)(1)'s reference to convictions "in any court" should be given the full scope denoted by its text.

2. Congress, as a matter of legislative practice, has limited use of the unqualified phrase "convicted in any court" to contexts where its natural meaning—embracing convictions in both domestic and foreign courts—comports with the congressional design. For example, Section 817 of the USA PATRIOT ACT, Pub. L. No. 107-56, Title VIII, 115 Stat. 386, which was enacted in the wake of the September 11, 2001, terrorist attacks on the United States, precludes persons who have been "convicted in any court" of a crime punishable by imprisonment for more than one year from possessing biological weapons. § 817(2), 115 Stat. 386, as amended by the Public Health Security

[11] See also 1968 Omnibus Act, Pub. L. No. 90-351, § 901(a)(8), 82 Stat. 226 (congressional finding that gun trafficking in interstate and foreign commerce has allowed weapons "to fall into the hands of lawless persons, including armed groups who would supplant lawful authority, thus creating a problem of national concern").

and Bioterrorism Preparedness Response Act of 2002, Pub. L. No. 107-188, § 231(a)(4), 116 Stat. 660 (to be codified at 18 U.S.C. 175b(d)(2)(B)). Likewise, 18 U.S.C. 842(d)(2) and 842(i)(1) prohibit persons who have been "convicted in any court" of a crime punishable by imprisonment for more than one year from possessing, shipping, transporting, or receiving explosive materials. Given the potentially devastating consequences of putting biological weapons or explosive materials in the hands of the wrong person, Congress's choice of statutory language that covers both foreign and domestic convictions makes sense.[12] And where the operation of a criminal statute is "not logically dependent on the[] locality" of the triggering conduct, neither Congress nor this Court has "thought it necessary to make specific provision in the law that the *locus* shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense." *United States* v. *Bowman*, 260 U.S. 94, 98 (1922).[13]

[12] The three other statutes in which the phrase "convicted in any court" appears similarly support the coverage of both domestic and foreign convictions. See 20 U.S.C. 6736(d)(1)(A) (Supp. I 2001) (federal limitations on the liability of teachers to lawsuits do not apply to conduct arising from any "act of international terrorism * * * for which the defendant has been convicted in any court"); 21 U.S.C. 206 (regulation applying to consular districts in China); 42 U.S.C. 14503(f)(1)(A) (federal limitations on the liability of volunteers to lawsuits do not apply to conduct arising from any "act of international terrorism * * * for which the defendant has been convicted in any court"). By contrast, several other statutory provisions, including one within the gun control law itself, refer to convictions entered "in any court of the United States" or of the States. *E.g.*, 18 U.S.C. 930(g)(3); 10 U.S.C. 986(c)(1); 15 U.S.C. 8.

[13] See also *Maul* v. *United States*, 274 U.S. 501, 510-511 (1927); *Lloyd* v. *American Export Lines, Inc.*, 580 F.2d 1179, 1187-1190 (3d Cir.) (admitting record of a Japanese conviction under Federal

D. The Exclusion Of Certain Federal And State Business Crimes From The Ban On Gun Possession By Criminals Supports The Coverage Of Foreign Convictions

Petitioner places great weight (Br. 17-19) on a definitional provision, which provides that the phrase "crime punishable by imprisonment for a term exceeding one year" does not include

> (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
>
> (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

18 U.S.C. 921(a)(20).[14] That reliance is misplaced, for at least three reasons.

First, if "any court" referred exclusively to federal and State courts, then there would have been no reason for Congress to include "Federal or State" as modifiers to identify which business crimes were excluded in Section 921(a)(20)(A). Likewise, there would have been no need to include the modifier "State" for the misdemeanor offenses excluded in Section 921(a)(20)(B).[15]

Rule of Evidence 803(22), even though Congress made no specific reference in that rule to convictions obtained in foreign countries), cert. denied, 439 U.S. 969 (1978).

[14] Congress separately defined "State" to include "the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone)." 18 U.S.C. 921(a)(2).

[15] The government is aware of no federal offenses that, although classified as misdemeanors, are punishable by more than one year but less than two years in prison. See 18 U.S.C. 3581(b)(6)-(8); cf.

This Court has refused time and again to treat statutory text "essentially as surplusage—as words of no consequence." *Ratzlaf* v. *United States*, 510 U.S. 135, 140 (1994). That rule applies with particular force to the construction of criminal laws. *Id.* at 140-141 ("Judges should hesitate so to treat statutory terms in any setting, and resistance should be heightened when the words describe an element of a criminal offense."). That Congress considered it necessary to restrict the exceptions to "Federal" and "State" offenses therefore confirms rather than undermines the conclusion that Section 922(g)(1) starts with an even larger universe of convictions. See *Gonzales*, 520 U.S. at 5 ("Given that Congress expressly limited the phrase 'any crime' to only federal crimes, we find it significant that no similar restriction modifies the phrase 'any other term of imprisonment.'") (construing 18 U.S.C. 924(c)(1)).

Second, and in any event, in light of the gun control law's broadly protective purpose, Congress could reasonably choose to proceed circumspectly in the creation of exceptions. By excluding only state and federal crimes, Congress carved out from Section 922(g)'s prohibition only business crimes involving forms of regulation with which Congress was quite familiar. Due to the variety and disparity in how other nations define, label, and classify their penal provisions, however, Congress could be less confident that analogous conduct in foreign jurisdictions would lead to felony convictions in the first place, or that granting the ex-

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18 U.S.C. 924(a)(4) (deeming a violation of 18 U.S.C. 922(q) to be a misdemeanor despite the five-year sentence imposed).

clusion would exempt only relatively non-dangerous individuals.[16]

Third, the crux of petitioner's argument is not that the text of Section 922(g)(1) excludes foreign convictions—its plain meaning encompasses them—but that it would be "peculiar" if "[a]n individual convicted of an offense in Canada classified as a misdemeanor which carries a maximum sentence of two years imprisonment could not possess a firearm, but an individual convicted of an offense in a State court * * * which carries a maximum sentence of two years imprisonment could possess a firearm." Pet. Br. 17. Perhaps that would be an unusual outcome. But subjective assessments of whether particular applications of a law are "peculiar" provide no basis for courts to

[16] Furthermore, at the same time that Congress first enacted and then reenacted in 1986 Section 922(g)(1)'s "any court" provision, the law provided a mechanism for individuals to obtain relief from firearms disabilities like Section 922(g)(1). Section 925(c) permits individuals to apply to the Attorney General for relief, *inter alia*, from the prohibition on possessing firearms. The enacting Congress thus knew that the statute contained a safety valve for individuals whose foreign convictions did not warrant a ban on possessing firearms. The Attorney General has delegated the authority to grant relief from the firearms disability to ATF. Since 1992, Congress has included language in ATF's annual appropriation that forbids it from expending any funds to act upon applications by individuals for relief under Section 925(c). See generally *United States* v. *Bean*, 537 U.S. 71, 73-75 (2002). That action by subsequent Congresses, however, casts no relevant light on the intent of the 1968 and 1986 Congresses that enacted and reenacted the "any court" language. See, *e.g.*, *South Dakota* v. *Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998) ("We have often observed, however, that 'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'") (quoting *United States* v. *Philadelphia Nat'l Bank*, 374 U.S. 321, 348-349 (1963)).

disregard duly enacted statutory text. The Constitution leaves such value judgments to the political branches.

Beyond that, to the extent that petitioner can espy in the statutory text the potential for an occasional anomaly, Congress evidently was untroubled by that prospect in framing the firearm prohibitions. To illustrate, under Section 921(a)(20)(B), federal convictions for offenses punishable by up to two years in prison serve as disabling predicates, while their state-law counterparts do not—*if* they are classified under state law as "misdemeanors." See, *e.g.*, 21 U.S.C. 841(b)(3) (drug possession); 21 U.S.C. 844(a) (same); 18 U.S.C. 3146(b)(A)(iii) (failure to appear); 18 U.S.C. 228 (failure to pay child support); 15 U.S.C. 645 (theft or embezzlement of certain funds); 26 U.S.C. 5691(a) (non-payment of tax).[17] More generally, differences in state laws mean that conduct that would give rise to the firearms disability if committed in one State (because that State treats the conduct as a felony) would not lead to a disability if committed in a State that denominates the equivalent crime a misdemeanor. Petitioner presumably would not argue that courts must rewrite the statute to prevent those disparate results from arising. But, if courts lack the authority to emend statutory language to eliminate such anomalies under domestic law, courts have no greater license to read "any" to mean something less than "any" just to avoid the differential treatment of domestic and foreign convic-

[17] Congress was fully aware that there were federal offenses that were punishable by up to two years of imprisonment at the time it enacted 18 U.S.C. 921(a)(20)(B), because that is the exact penalty it imposed for violations of 18 U.S.C. App. 1202(a) (1970); see also 18 U.S.C. 930(e)(1).

tions that petitioner hypothesizes. Cf. *Caron*, 524 U.S. at 314-316 (construing the gun control law's exception for persons whose state-law right to possess firearms has been restored, 18 U.S.C. 921(a)(20), to permit a Section 922(g)(1) prosecution for the possession of firearms that state law expressly permits the defendant to possess, despite the potential for "incongruities").

More importantly, petitioner's proposed reading of "any court" as excluding foreign courts would create a greater and more dangerous interpretive anomaly. If foreign convictions are entirely excluded, then those convicted of murder, rape, armed robbery, and terrorism overseas could freely possess, receive, ship, and transport firearms within the United States, while a person convicted domestically of tampering with a vehicle identification number, 18 U.S.C. 511(a), or possessing a "three-neck round-bottom flask," 21 U.S.C. 843(a)(6), could be barred for life from possessing firearms. It is hard to see the sense in that. Furthermore, petitioner's cramped reading of statutory text presupposes that, while Congress wanted to prevent importers, dealers, and manufacturers from trafficking firearms to terrorists, 18 U.S.C. 921(a)(22), Congress cared not at all whether those persons actually convicted of assassination, kidnapping, or other "violent acts or acts dangerous to human life" abroad, 18 U.S.C. 921(a)(22) (B) and (C)(iii), are able to ship, transport, receive, and possess firearms in the United States. There is "no reason why the commission of serious crimes elsewhere in the world is likely to make the person so convicted less dangerous than he whose crimes were committed within the United States." *United States* v. *Winson*, 793 F.2d 754, 758 (6th Cir. 1986) (citations omitted).[18] Thus, if statutory construction is to be driven by the desire to avoid "peculiar" results, that mode of analysis dictates that Section 922(g)(1)'s reference to convictions in "any court" be read to include foreign courts.

For many of those same reasons, petitioner's reliance (Br. 24-25) on the express reference in 18 U.S.C. 921(a)(33)(A)(i) to domestic violence misdemeanors under "Federal or State law" is misplaced. Petitioner's reading of the statute would leave the phrase "Federal or State law" no work to do. See *TRW Inc.* v. *Andrews*, 534 U.S. 19, 29 (2001). And petitioner's reading creates worse anomalies in coverage than those he hypothesizes (Br. 24-25). Under his approach, a person convicted of violating a restraining order by telephoning his estranged wife is barred for life from possessing firearms, but if that same person shoots and kills his estranged wife during a Canadian vacation, he can buy as many guns as he wants. See *Caron*, 524 U.S. at 316 (rejecting reading of gun control law that "would undermine [Congress's] protective purpose").[19]

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[18] See also *United States* v. *Gayle*, 342 F.3d 89, 93 (2003), ("[T]here are legitimate reasons why, depending upon the crime, Congress might have wished to include foreign convictions. For example, Congress might well have intended that a violent crime * * * such as murder qualify as a predicate offense under § 922(g)(1)."), as amended on reh'g (2d Cir. 2004), cert. denied, No. 03-10327, 124 S. Ct. 2888 (2004), and petition for cert. pending, No. 03-1510 (filed May 6, 2004); cf. *Kole*, 164 F.3d at 175 (Because the statutory text "reflects a congressional intent to significantly increase sentences for drug offenders with prior convictions for felony drug offenses[,] * * * it would not be logical to limit the enhancement to those persons who had been convicted of a prior drug felony (or its equivalent) only in the United States.").

[19] See Office of Justice Programs, Dep't of Justice, *Stalking and Domestic Violence: The Third Annual Report to Congress Under*

In short, legislation requires linedrawing, and the gun control law is no exception. Petitioner no doubt would prefer that those lines had fallen elsewhere. But the "fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration." *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 316 (1993) (quoting *United States R.R. Retirement Bd.* v. *Fritz*, 449 U.S. 166, 179 (1980)). The Court's task is to "interpret, rather than author," federal laws. *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 494 n.7 (2001). Here, Congress chose comprehensive language to serve a broad and comprehensively protective purpose. The Court is "not at liberty to rewrite" that language, *id.* at 495 n.7, or to afford it anything other than its full and natural meaning.

E. The Legislative History Of Section 922(g)(1) Supports Its Straightforward Application To Convictions In Foreign Courts

1. Because the natural meaning of Section 922(g)(1)'s language "any court" includes foreign courts and because that understanding is confirmed by the statute's structure, purpose, the administering agency's reasonable interpretation of the statutory language, and Congress's specialized usage of the phrase "convicted in any court," there is no need to resort to legislative history. *Ratzlaf*, 510 U.S. at 147-148 ("[W]e do not resort to legislative history to cloud a statutory text that is clear."). In any event, there is no

the Violence Against Women Act 24-26 & App. B (July 1998) (listing States that treat the violation of a protective order as the felony).

legislative history that specifically discusses whether "any court" includes or excludes foreign courts.[20]

To the extent that the legislative history is relevant, the evolution of Section 922(g)(1) supports the conclusion that "any court" includes foreign courts. On two occasions before the present version of Section 922(g)(1) was enacted, Congress passed laws disqualifying felons from possessing or trafficking in firearms based only on convictions from state and federal courts. See Federal Firearms Act, ch. 850, § 2, 52 Stat. 1250 (codified at 15 U.S.C. 902(d) (1940), and 15 U.S.C. 902(d) (1964)); 18 U.S.C. App. 1202(a)(1) (1970). Congress specifically deleted those limitations through later amendments, as part of a concerted legislative effort to "enlarge[] the group of people coming within the Act's substantive prohibitions," *Bass*, 404 U.S. at 343 n.10. See 1968 Omnibus Act, Pub. L. No. 90-351, § 922(e), 82 Stat. 230-231 (1968); 1986 Firearms Owners' Protection Act, Pub. L. No. 99-308, § 102(6)(D), 100 Stat. 452. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 124 S. Ct. 2466, 2479 (2004) (quoting *Stone* v. *INS*, 514 U.S. 386, 397 (1995)). There thus is no basis for construing the present version of Section 922(g) to incorporate a limitation that Congress twice deleted from the law. See *Keene Corp.* v. *United States*, 508 U.S.

[20] See *Atkins*, 872 F.2d at 96 (1989) (noting that "the scant legislative history of 18 U.S.C. § 922 * * * offer[s] no illumination as to Congress's intended meaning"); *Winson*, 793 F.2d at 756 ("[A]n examination of the legislative history of Title IV reveals no discussion of the actual meaning of the phrase "in any court."); cf. *United States* v. *Concha*, 233 F.3d 1249, 1256 (10th Cir. 2000) ("The legislative history does not illuminate the meaning of 'convictions by any court'" in 18 U.S.C. 924(e)).

200, 208 (1993) (it is the Court's "duty to refrain from reading a phrase into the statute when Congress has left it out").

Nor can it fairly be argued that Congress dispensed with the qualifying "State or Federal" court language on the ground that such terms of limitation were unnecessary because "any court" would naturally be understood to refer only to domestic courts. If that were the case, there was no reason for Congress to enact, in conjunction with its 1968 and 1986 adoption of the "any court" phraseology, the "State and Federal" law limitations on the statutes' coverage of business, misdemeanor, and domestic violence crimes, 18 U.S.C. 921(a)(20), 922(g)(9).

In short, petitioner's reading of the legislative history would require the Court to hold that the 1968 and 1986 amendments deleting "State" and "Federal" were meaningless *and* that the qualifying "State" and "Federal" language simultaneously included elsewhere was surplusage. By contrast, affording "any court" its natural compass, as including foreign courts, would give practical effect to the 1968 and 1986 amendments, would be consistent with Congress's legislative purpose, and would give meaning to all of the words Congress enacted.

2. Petitioner (Br. 31-37), like the Second Circuit in *United States* v. *Gayle*, 342 F.3d 89, 94-95 (2003), as amended on rehearing (2d Cir. 2004), cert. denied, No. 03-10327, 124 S. Ct. 2888 (2004), and petition for cert. pending, No. 03-1510 (filed May 6, 2004), places great weight on the Senate Judiciary Committee's Report on the Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1220. See S. Rep. No. 1501, 90th Cong., 2d Sess. (1968). That Report accompanied a bill that defined the "felony" convictions that would debar an individual

from possessing firearms as, "in the case of a Federal law, an offense punishable by imprisonment for a term exceeding one year, and in the case of a State law, an offense determined by the laws of the State to be a felony." S. 3633, 90th Cong., 2d Sess. 11 (1968); see also S. Rep. No. 1501, *supra*, at 31. As the Second Circuit (*Gayle*, 342 F.3d at 95-96) and petitioner (Br. 33-35) further note, the House bill referred broadly to "any court." See H.R. 17735, 90th Cong., 2d Sess. 17-18 (1968). The two competing bills went to a Conference Committee, where the language of the Senate bill was rejected in favor of the broader "any court" language of the House bill. See H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess. 28-29 (1968). The Second Circuit reasoned (342 F.3d at 95), in an argument that petitioner echoes (Br. 35), that the Conference Report's failure to voice express disagreement with the Senate Report's definition of "felony" compels the conclusion that "any court" refers only to domestic courts.

In so holding, the Second Circuit noted that those "illuminating reports * * * have never been cited in a judicial opinion on the question and were not cited in the briefs furnished to us." *Gayle*, 342 F.3d at 95 n.6. There is a good reason for that. Those reports *postdate* by three and four months respectively Congress's enactment of the "any court" language in Section 922(e) of the 1968 Omnibus Act. All that the 1968 Gun Control Act did with respect to that Section was move it to its current location at 18 U.S.C. 922(g)(1), and add unrelated additions to the list of prohibited persons. Pub. L. No. 90-618, § 922(g), 82 Stat. 1220.

Petitioner's argument suffers from a second critical flaw. The Senate bill and the qualifying language to which the Report refers *were not enacted*. Instead, the Conference Report expressly rejected the Senate's

language and adopted the House bill's definition of "felony," which lacked language limiting the qualifying felonies to those entered by state or federal courts. H.R. Conf. Rep. No. 1956, *supra*, at 28-29. Far from being "illuminating" (342 F.3d at 95 n.6), such "failed legislative proposals," and *a fortiori* the Committee Reports elaborating on those failed proposals, "are 'a particularly dangerous ground on which to rest an interpretation of a prior statute.'" *United States* v. *Craft*, 535 U.S. 274, 287 (2002) (citation omitted).[21] Contrary to petitioner's argument (Br. 34), that rejection was one of substance not "terminology." The Senate version of the law that went to the Conference Committee had not only restricted the courts that could enter triggering felonies, but also had limited the bar to "crime[s] of violence." H.R. Conf. Rep. No. 1956, *supra*, at 28-29. The law as enacted thus rejected the Senate's proposed restrictions on qualifying convictions and, for the *third* time, specifically omitted language that would have limited qualifying convictions to domestic courts.

3. Petitioner's reliance (Br. 37-41) on the legislative history of the 1986 Firearms Owners' Protection Act fares no better. Petitioner relies on the fact that Congress consolidated two largely overlapping prohibitions that had previously been enacted in Titles IV and VII of the 1968 Omnibus Act. See *Barrett*, 423 U.S. at 220; see generally *Bass*, 404 U.S. at 342-343 & nn.9-10 (describing legislation). Petitioner insists (Br. 37) that Congress intended only to "merge[]" Title VII's provisions into Title IV, and contends that Congress's deletion of the limiting phrase court of the "United States or of a State or any political subdivision thereof" in the Title VII provision, 18 U.S.C. App. 1202(a) (1970), was of no consequence because "[n]o one suggested that any inconsistencies existed" (Br. 39). But on the face of the laws, textual inconsistencies did exist between Title IV's unqualified reference to "any court" and Title VII's more limited reference. The absence of legislative history discussing the difference is beside the point.[22]

Petitioner further emphasizes (Br. 38-39) that, in discussing the choice-of-law provision (now codified at 18 U.S.C. 921(a)(20)), Congress discussed developments in state law. See S. Rep. No. 583, 98th Cong., 2d Sess. 7 (1984). That is true. It is also beside the point. The Report nowhere says or suggests that foreign convictions are excluded or that "any" means something less than "any." Perhaps some Members of Congress "had in mind" (Pet. Br. 39) federal and state law crimes. But Congress often legislates in broader terms than the precise problem that motivated some of the legislators, and the limited concerns of some legislators cannot justify disregarding duly enacted statutory text. The more reliable indicator of congressional intent is what Congress said—"any court"—and what Congress did—delete language that would have limited Section

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[21] See also *United States* v. *Price*, 361 U.S. 304, 310-311 (1960) ("Such non-action by Congress affords the most dubious foundation for drawing positive inferences."); see generally Recent Cases, *Criminal Law—Predicate Offenses Barring Possession of a Firearm*, 117 Harv. L. Rev. 1267 (Feb. 2004).

[22] Moreover, petitioner relies (Br. 37-39) principally on Senate Report No. 583, 98th Cong., 2d Sess. (1984). But once again, petitioner relies on legislative history that pertains to an unenacted bill. Senate Report No. 583 accompanied S. 914, 98th Cong., 2d Sess. (1984). That bill was succeeded by S. 49, 99th Cong., 1st Sess. (1985), which was the ultimate basis for the 1986 Act.

922(g)(1)'s bar to convictions entered by courts of "the United States or of a State."[23]

Petitioner's invocation (Br. 41-42) of the Brady Handgun Violence Prevention Act of 1993 (Brady Act), Pub. L. No. 103-159, Title I, 107 Stat. 1536, is equally unhelpful. The Brady Act postdates by a quarter century Congress's enactment of the "any court" language in Section 922(g)(1). See *Almendarez-Torres* v. *United States*, 523 U.S. 224, 237 (1998) ("[L]ater enacted laws * * * do not declare the meaning of earlier law."). In any event, Congress's directive that the Attorney General establish on an expeditious basis a computerized National Instant Criminal Background Check System (NICS) incorporating state criminal conviction records does not mean that foreign convictions are excluded. It just means that Congress set priorities, in light of limited resources and the state of computer technology worldwide in the early 1990s. Moreover, as discussed at page 15, *supra*, NICS does include some foreign convictions and cross-references the records of Immigration and Customs Enforcement.[24]

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[23] See *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998) ("But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."); *Beecham*, 511 U.S. at 374 ("[O]ur task is not the hopeless one of ascertaining what the legislators who passed the law would have decided had they reconvened to consider petitioners' particular cases. Rather, it is to determine whether the language the legislators actually enacted has a plain, unambiguous meaning.").

[24] The fact that the Attorney General is not required to notify foreign governments of any mistakes in their records (see Pet. Br. 43) simply reflects Congress's preeminent concern with improving domestic recordkeeping, as well as Congress's traditional hesitation to prescribe Executive Branch communications with foreign governments. Petitioner's focus (*ibid.*) on the absence of a private cause of action against foreign governments to require them to correct their criminal records overlooks the serious enforceability, sovereign immunity, international comity, and foreign relations implications of authorizing such suits.

F. Concerns About Possible Unfairness In The Criminal Procedures Of Foreign Courts Do Not Mandate The Wholesale Exclusion Of Foreign Convictions From Section 922(g)(1)

Petitioner's objection to the inclusion of foreign convictions rests heavily on the potential for unfairness he perceives in foreign criminal proceedings. Pet. Br. 10-11, 16. But, despite his complaints (Br. 10-11), petitioner does not claim that there was any fundamental unfairness in the proceedings by which he was convicted in Japan. Pet. i, 3 n.1; Pet. Br. 4 n.3. Nor has any such unfairness been identified in the foreign convictions in any of the prosecutions that have been brought under Section 922(g)(1). See *Atkins*, 872 F.2d at 95 n.1; *Winson*, 793 F.2d at 757; see also *Gayle*, 342 F.3d at 91-96 (no suggestion of impropriety for Canadian conviction); *United States* v. *Concha*, 233 F.3d 1249, 1253-1257 (10th Cir. 2000) (no suggestion of impropriety for British conviction). The "mere possibility of making th[e] argument" that a particular application of a law could be unfair did not lead this Court to deny the phrase "convicted in any court" its full and natural meaning in *Lewis*, 445 U.S. at 61 n.5, and it should not do so here. There is no basis for broadly foreclosing the use of any foreign conviction under Section 922(g)(1), no matter how serious the crime and no matter how fairly obtained, just to dispel

the possibility that someone else's foreign conviction might be entered unfairly.

1. ***Section 922(g)(1) focuses on the fact of conviction***

In *Lewis*, this Court rejected the argument that potentially unconstitutional state court convictions should not trigger a firearms disability under the former 18 U.S.C. App. 1202(a)(1) (1976) or Section 922(g)(1). See 445 U.S. at 60-67; *id.* at 58 n.4 (noting that the "identical issue" arises under Section 922(g)(1)). The Court first held that the plain language of Section 1202(a)(1) (like Section 922(g)(1)) contains no textual basis for restricting its coverage to lawful convictions or those immune from collateral attack. *Id.* at 60. The Court then held that it is "the *fact* of a felony conviction" alone that triggers the firearm disability. *Ibid.* The fact of a conviction is sufficient, without more, to implicate Congress's concern that firearms be kept away from "potentially irresponsible and dangerous" persons. *Id.* at 65 (quoting *Barrett*, 423 U.S. at 218); see also *Custis*, 511 U.S. at 490-491 ("The statute focuses on the *fact* of the conviction and nothing suggests that the prior final conviction may be subject to collateral attack for potential constitutional errors before it may be counted.").

That same rationale applies to foreign convictions. Indeed, if an *actually* unconstitutional and fundamentally unfair state conviction still validly disqualifies an individual from possessing firearms under Section 922(g)(1), then there is no sound reason why petitioner's fundamentally fair conviction from a foreign jurisdiction should automatically be excluded. The law's "focus [is] not on reliability, but on the mere fact of conviction, or even indictment, in order to keep firearms away from potentially dangerous persons." *Lewis*, 445 U.S. at 67.

Furthermore, the prohibition on possessing firearms is an "essentially civil disability." *Lewis*, 445 U.S. at 67. "The statute focuses on the *fact* of the conviction and nothing suggests that the prior final conviction may be subject to collateral attack for potential constitutional errors before it may be counted." *Custis*, 511 U.S. at 490-491. Thus, even if the Constitution requires some review of the fairness by which a foreign conviction is obtained when it is used to "support guilt or enhance punishment," *Lewis*, 445 U.S. at 67 (citation omitted), *Lewis* makes clear that there is no such prerequisite to the enforcement of an essentially civil disability through a criminal sanction, *ibid.*

The fact that indictment alone is sufficient to trigger what is in effect a statutory prohibition on purchasing or receiving firearms (see 18 U.S.C. 922(d)(1), 922(n)) underscores the essentially civil character of the disability imposed, as does Section 922's bar on possession by persons dishonorably discharged by the military, 18 U.S.C. 922(g)(6); see 32 C.F.R. Pt. 70 (discharge procedures). Those provisions confirm that Congress did not intend compliance with the full panoply of criminal defendant's rights under the federal Constitution to be a prerequisite for Section 922's proscriptions to attach. Rather, Congress was looking for a "convenient," albeit "somewhat inexact, way of identifying 'especially risky people,'" *Dickerson*, 460 U.S. at 120. Thus, a foreign conviction is used in Section 922(g)(1), not as an authoritative adjudication of criminal liability for purposes of imposing criminal sanctions for the foreign offense of conviction, but rather as a roughly reliable indicator of the individual's status as a potentially dangerous person. Cf. *Hilton* v. *Guyot*, 159 U.S. 113, 145 (1895) ("A judgment affecting the status of persons * * * is recognized as valid in every country, unless

contrary to the policy of its own law."). Congress's judgment that the fact of a conviction—whether federal, state, or foreign—adequately serves that purpose is rational and should be respected, especially "when one considers Congress' broad purpose." *Lewis*, 445 U.S. at 67.

2. *Congress was aware that foreign convictions often have domestic consequences*

Petitioner expresses concern (Br. 4-8 & n.3, 16) that recognizing foreign convictions as qualifying felonies for Section 922(g)(1) would result in the consideration of convictions obtained without the protections afforded criminal defendants in American courts (Pet. Br. 30-31), and he thus concludes that Congress would not have intended their inclusion. But attaching essentially civil consequences to the *fact* of a foreign conviction is not as uncommon as petitioner supposes. In fact, it occurs in a variety of areas, and Congress must be presumed to have enacted Section 922(g)(1)'s "any court" language with those background practices in mind.

a. A prime example is extradition proceedings. Extradition is a quasi-civil process by which fugitive individuals, including American citizens, are removed to foreign countries to face criminal charges or to serve a sentence following a conviction there. See 18 U.S.C. 3184, 3196; *United States* v. *Fernandez-Morris*, 99 F. Supp. 2d 1358 (S.D. Fla. 1999). Upon application by the federal government, the district court issues an arrest warrant and certifies extraditability upon finding only that (1) the crime is extraditable (*i.e.*, it is covered by the terms of an existing extradition treaty and is a crime in both countries), and (2) there is probable cause to believe the fugitive committed the charged crime. See generally *Fernandez* v. *Phillips*, 268 U.S.

311, 312-314 (1925); *Ornelas* v. *Ruiz*, 161 U.S. 502, 512 (1896). Direct appeal of the certification is not available, but the person can obtain collateral review through habeas corpus. See *Kastnerova* v. *United States*, 365 F.3d 980, 984 & n.4 (11th Cir.), cert. denied, 124 S. Ct. 2826 (2004). Habeas corpus review is narrow and limited to whether the extraditing court had jurisdiction, whether there was jurisdiction over the fugitive individual, whether the extradition treaty was in force and covered the crime at issue, and whether any evidence supports the extraditing court's finding of probable cause. *Id.* at 984. Once those basic findings are made, the decision whether to extradite the person is committed to the discretion of the Secretary of State. See 18 U.S.C. 3186.

It is the fact of a foreign conviction or charge covered by an extradition treaty, combined with probable cause, that empowers the United States government to seize a person (including a citizen) and hand the individual over to another country's criminal justice system. The judiciary undertakes no inquiry into the perceived fairness or reliability of the foreign courts' proceedings. The foreign court is not required to conduct its criminal trials according to the requirements of the United States Constitution. "[T]hose provisions have no relation to crimes committed without the jurisdiction of the United States against the laws of a foreign country." *Neely* v. *Henkel*, 180 U.S. 109, 122 (1901). Furthermore, whatever his complaints about the Japanese criminal justice system (Pet. Br. 4-8), petitioner's

> citizenship does not give him an immunity to commit crime in other countries, nor entitle him to demand, of right, a trial in any other mode than that allowed

to its own people by the country whose laws he has violated.

Neely, 180 U.S. at 123. Petitioner thus "cannot complain" that he was "required to submit to such modes of trial and to such punishment as the laws of [Japan] may prescribe for its own people." *Ibid.*; see also *Wilson* v. *Girard*, 354 U.S. 524 (1957) (upholding extradition of American citizen to Japan). For extradition, it is enough that the Legislative and Executive Branches together, as manifested in the particular treaty or convention, have jointly determined that the foreign country's procedures are "adequate to the ends of justice." *Neely*, 180 U.S. at 123. Beyond that, "[i]t is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation." *Ahmad* v. *Wigen*, 910 F.2d 1063, 1066 (2d Cir. 1990) (quoting *Jhirad* v. *Ferrandina*, 536 F.2d 478, 484-485 (2d Cir.), cert. denied, 429 U.S. 833 (1976)).[25]

The United States has extradition treaties with Japan and more than 100 other foreign governments permitting the extradition of United States citizens to stand trial or serve sentences in those countries. See Treaty on Extradition Between the United States of America and Japan, 31 U.S.T. 892 (Mar. 3, 1978); 18

[25] See also *In re Requested Extradition of Smyth*, 61 F.3d 711, 714 ("[C]ourts are ill-equipped as institutions and ill-advised as a matter of separation of powers and foreign relations policy to make inquiries into and pronouncements about the workings of foreign countries' justice systems."), amended by 73 F.3d 887 (9th Cir. 1995), cert. denied, 518 U.S. 1022 (1996); *United States* v. *Kin-Hong*, 110 F.3d 103, 110 (1st Cir. 1997); cf. *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 416 (1964) ("[T]he courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.").

U.S.C. 3181 (Historical and Statutory Notes) (listing 119 extradition treaties). That documents the joint conclusion of Congress and the Executive Branch that the criminal justice systems of many nations sufficiently comport with the rudiments of fair process as to warrant seizing American citizens and handing them over for trial and punishment in those countries. And, since Congress concluded that those countries' judicial systems warranted respect in an extradition treaty, there is no reason why Congress would have hesitated to make convictions entered in those same systems the basis for a domestic firearms disability.[26]

b. Foreign criminal convictions and criminal activities are also accorded recognition in federal immigration law. 8 U.S.C. 1101(a)(43) (defining an aggravated felony, which disqualifies aliens from a variety of forms of immigration relief and benefits, to include "an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years"); 8 U.S.C. 1182(a)(2)(A)(i) (convictions of controlled substance offense or crimes of moral turpitude in foreign country render alien admissible).[27]

In addition, the Antiterrorism Act of 1990 provides that a foreign criminal conviction generally will "estop the defendant from denyng the essential allegations of the criminal offense in any subsequent civil proceeding"

[26] Because Japan is among those countries with which the United States has an extradiction treaty, this case does not present the question whether the predicate foreign convictions under Section 922(g)(1) include those countries with which the United States does not have such a treaty.

[27] See also *Ortiz* v. *INS*, 179 F.3d 1148, 1154-1155 (9th Cir. 1999); *Chiaramonte* v. *INS*, 626 F.2d 1093, 1098 & n.4 (2d Cir. 1980); cf. *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 424-425 (1999).

for damages arising from a terrorist act. 18 U.S.C. 2223(c).

c. Foreign convictions for sexual offenses are also taken into account in administering some sex offender registries and notification systems. For example, if the federal Bureau of Prisons receives, under the International Treaty Transfer Program, 18 U.S.C. 4100, 4102, a United States citizen who was convicted of a sexual crime in a foreign country, that foreign conviction subjects him to the rules requiring community notification, including sex-offender registration, before release. See 28 C.F.R. 571.72; Bureau of Prisons, Dep't of Justice, *Program Statement No. 5141.02* (Dec. 14, 1998). At least two States also include convictions for foreign sex offenses in their sex offender registration programs. See Kan. Stat. Ann. § 21-4704(j) (Supp. 2002), as amended by 2004 Kan. Sess. Laws 175 (May 20, 2004); Ohio Rev. Code Ann. §§ 2950.01(D)(1)(f), 2950.09(A) (Anderson 2003). [28]

d. The federal Sentencing Guidelines also permit consideration of foreign convictions. While sentences resulting from foreign convictions are not counted in determining a defendant's criminal history category, they may be considered by the court in assessing the adequacy of the criminal history category to determine

[28] A number of States also count foreign convictions in their provisions governing habitual offenders. See Cal. Penal Code § 668 (West 2004); Kan. Stat. Ann. § 21-4504(b) (1995 & Supp. 2004); La. Rev. Stat. Ann. § 15.529.1 (West 2004); Okla. Stat. Ann., title 21, § 54 (West 2002); 42 Pa. Cons. Stat. Ann. § 9721, ch. 303.8(f) (West 2004); Tenn. Code Ann. §§ 40-35-106(b)(5), 40-35-107(b)(5), 40-35-108(b)(5) (2003); Vt. Stat. Ann. title 13, § 11 (1998); see generally Alex Glashausser, *The Treatment of Foreign Country Convictions as Predicates for Sentence Enhancement Under Recidivist Statutes*, 44 Duke L. J. 134 (Oct. 1994)

whether an upward departure is warranted. See Sentencing Guidelines §§ 4A1.2(h), 4A1.3(a); see also *United States* v. *Simmons*, 343 F.3d 72, 78-79 (2d Cir. 2003) (upward departure based on Canadian convictions); *United States* v. *Fordham*, 187 F.3d 344, 347-348 (3d Cir. 1999), cert. denied, 528 U.S. 1175 (2000).[29]

In short, including convictions entered by foreign courts in Section 922(g)(1), would not be the anomaly that petitioner postulates. In light of the large number of individuals moving transnationally and the undeniable reality of trans-border crime, a variety of statutory schemes take cognizance of foreign convictions. To do otherwise would create serious disparities in the face of the increasing prevalence of individual criminals and crimes that are not strictly contained within national boundaries. Indeed, no country has proven more receptive to the recognition of foreign judgments than the United States. Restatement, *supra*, at 592 (introductory note).[30] What petitioner has not attempted to explain is how Congress could consider large numbers of foreign courts systems sufficiently fair and reliable to deprive an American citizen of liberty, to incarcerate

[29] *Simmons* suggested that foreign convictions occurring in less-familiar legal systems might require "further inquiry and development before they may properly support an upward departure," 343 F.3d at 79, but the court had no occasion to decide that point.

[30] See also *Ritchie* v. *McMullen*, 159 U.S. 235, 241-242 (1895); *Hilton*, 159 U.S. at 182-206; 18 U.S.C. 3505 (allowing admission into evidence of foreign records of regularly conducted activity). Petitioner cites (Br. 29-30) *People* v. *Braithwaite*, 240 N.W.2d 293 (Mich. Ct. App. 1976), for the proposition that courts refuse to recognize foreign judgments, but that dicta has been repeatedly repudiated. See, *e.g.*, *People* v. *Galvan*, 572 N.W.2d 49, 50 n.1 (Mich. Ct. App. 1997), appeal denied, 586 N.W.2d 403 (Mich. 1998); *People* v. *Gaines*, 341 N.W.2d 519, 521 (Mich. Ct. App. 1983).

American citizens abroad, to trigger civil sex offender notification laws, and to withhold relief under the immigration laws, but not reliable enough to trigger an essentially civil firearms disability or to bar the possession of biological weapons and explosive materials.[31]

3. *No extensive review for fundamental fairness is required*

The court of appeals considered it obvious that foreign convictions were covered by Section 922(g)(1)'s reference to "any court." The court went on to hold, however, that foreign convictions could provide the predicate for a Section 922(g)(1) prosecution only if they satisfied the multi-prong test of the Restatement, *supra*, § 482, at 604. But, as this Court recognized in *Lewis*, *supra*, Congress focused on the fact of conviction and did not want to transform the firearms provisions into a vehicle for collateral attacks on convictions entered by other jurisdictions. *Lewis* thus made clear that the fact of a conviction alone triggers Section 922(g)(1)'s coverage, even if the conviction could be collaterally attacked as unconstitutional. 445 U.S. at 67. A departure from constitutionally prescribed procedures is no more significant (and is arguably less so)

[31] The presumption against the extraterritorial application of federal law, see *EEOC* v. *Arabian American Oil Co.*, 499 U.S. 244 (1991), has no application here. Section 922(g)(1) regulates the possession, receipt, shipment, and transportation of firearms by individuals within the territory of the United States. It does not regulate conduct on foreign territory. The mere fact that domestic consequences attach to foreign conduct does not make the law any more extraterritorial than a domestic prohibition on donating blood based on foreign travel or a law assessing Customs duties based on purchases abroad.

when it occurs in a foreign country than when it occurs at home.[32]

Finally, if the Court concludes that some form of collateral review of the foreign conviction is necessary before it can trigger Section 922(g)(1)'s bar, that review should be appropriately deferential and should require nothing more than the most fundamental rudiments of fair process. Principles of international comity preclude (absent congressional direction to the contrary) retrying the merits of foreign judgments or insisting that other nations follow every dictate of the United States Constitution. That is especially true in cases like this, where the Executive Branch has already exercised its discretion to premise a prosecution on the foreign conviction. In *Hilton*, this Court held that the central prerequisites for *enforcement* of a foreign judgment are (1) jurisdiction in the trial court, (2) regularized proceedings, (3) notice to the defendant, and (4) "a system of jurisprudence likely to secure an impartial administration of justice." 159 U.S. at 202; see also *Neely*, 180 U.S. at 123 (holding that, in extradition cases, the foreign court system need only be "adequate to the ends of justice" and not discriminate against

[32] In *Lewis*, 445 U.S. at 67, the Court noted that criminal defendants generally have other avenues for challenging their predicate convictions, such as through an appeal. Likewise, those convicted abroad often may appeal their convictions within the foreign court system. See, *e.g.*, Japanese Ministry of Justice, *Criminal Justice in Japan* 20-21. For example, petitioner would have been provided counsel to appeal his case, *id.* at 10, 20-21, but he "failed to pursue [that] remed[y]," so he now "is without recourse," *Daniels* v *United States*, 532 U.S. 374, 382 (2001). In any event, even in the United States, the opportunity to appeal a criminal conviction is not constitutionally mandated. *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 110 (1996).

American citizens). No more should be required for the mere recognition of a foreign judgment under Section 922(g)(1).[33]

With respect to petitioner's case, the very type of evidentiary and cross-examination objections to the Japanese proceedings that he levels (Br. 4-8) were found inadequate to impeach a foreign judgment in *Hilton*. See 159 U.S. at 205 (Because "the practice followed and the method of examining witnesses were according to the laws of France, we are not prepared to hold that the fact that the procedure in these respects differed from that of our own courts is, of itself, a sufficient ground for impeaching the foreign judgment."); compare Pet. Br. 4 (objecting to lack of a jury trial), with *Schriro* v. *Summerlin*, 124 S. Ct. 2519, 2525 (2004) ("the mixed reception that the right to jury trial has been given in other countries * * * surely makes it implausible that judicial factfinding so seriously diminishes accuracy as to produce an impermissibly large risk of injustice") (internal quotation marks, brackets, and emphasis omitted).

4. *The rule of lenity does not apply*

Petitioner errs (Br. 47-48) in invoking the rule of lenity in the construction of criminal statutes. That rule

[33] Cf. *United States* v. *Mendoza-Lopez*, 481 U.S. 828, 841 (1987) (due process requires some opportunity for "impartial judicial" review before a civil administrative deportation order will support a criminal prosecution for unlawful reentry); *id.* at 839 n.17; *Kole*, 164 F.3d at 171 (holding that, with respect to Philippines' criminal judgment used to enhance a defendant's sentence under 21 U.S.C. 851(a), "Congress intended only to ensure fundamental fairness by excluding any conviction that was obtained in a manner inconsistent with concepts of fundamental fairness and liberty endemic in the Due Process Clause of the Fifth Amendment of the United States Constitution.").

applies only when the statutory language is ambiguous, *Lewis*, 445 U.S. at 65, and, even then, only when "after seizing everything from which aid can be derived, we can make no more than a guess as to what Congress intended." *Muscarello* v. *United States*, 524 U.S. 125, 138 (1998) (internal quotation marks omitted and punctuation altered). The phrase "any court" is undeniably broad. But the fact that statutory language is sweeping does not render it ambiguous. Nor does the fact that Congress may not have specifically considered the application of Section 922(g) to foreign convictions. That a law can apply to situations not anticipated by its drafters "does not demonstrate ambiguity. It demonstrates breadth." *National Org. for Women, Inc.* v. *Scheidler*, 510 U.S. 249, 262 (1994) (quotation marks and citations omitted). The natural expanse of "any court" is clear, both on its face and when considered in light of the overall structure, purpose, and history of Section 922(g)(1). See *Lewis*, 445 U.S. at 60 ("The statutory language is sweeping, and its plain meaning is that the fact of a felony conviction imposes a firearm disability."). That is sufficient to foreclose resort to the rule of lenity. *Bowman*, 260 U.S. at 102. Indeed, it is particularly hard for petitioner to contend that, when he purchased a firearm *one week* after completing his Japanese sentence, he was not on fair notice that he had been "convicted in *any* court."

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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18 U.S.C. § 921. Definitions

(a) As used in this chapter—

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and

made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

(11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter.

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter.

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17)(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellent powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Attorney General" means the Attorney General of the United States;

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means—

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby,

or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: *Provided*, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means

activity, directed against United States persons, which—

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means—

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

(30) The term "semiautomatic assault weapon" means—

(A) any of the firearms, or copies or duplicates of the firearms in any caliber, known as—

(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

(ii) Action Arms Israeli Military Industries UZI and Galil;

(iii) Beretta Ar70 (SC-70);

(iv) Colt AR-15;

(v) Fabrique National FN/FAL, FN/LAR, and FNC;

(vi) SWD M-10, M-11, M-11/9, and M-12;

(vii) Steyr AUG;

(viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and

(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;

(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a bayonet mount;

(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and

(v) a grenade launcher;

(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;

(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;

(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;

(iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and

(v) a semiautomatic version of an automatic firearm; and

(D) a semiautomatic shotgun that has at least 2 of—

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a fixed magazine capacity in excess of 5 rounds; and

(iv) an ability to accept a detachable magazine.

(31) The term "large capacity ammunition feeding device"—

(A) means a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; but

(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)(A) Except as provided in subparagraph (C),[1] the term "misdemeanor crime of domestic violence" means an offense that—

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this

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[1] So in original. No subparagraph (C) was enacted in subsec. (a)(33).

chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means—

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

APPENDIX B

18 U.S.C. § 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State,

and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in

conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manu-

facturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to—

(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the manufacture of such ammunition for the purpose of exportation; and

(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to—

(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation;

(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Attorney General; and

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other

business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed

collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are ..... Signature ..... Date ....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of

the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who[2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

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[2] So in original. The word "who" probably should not appear.

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or

foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(*l*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any

possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the

Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the[3] House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence,

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[3] So in original. Probably should be "of the".

and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State,

and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and

ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer

that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed

dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee—

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who—

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (II) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the

sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—

(i) the ratio of the number of law enforcement officers of the State in which the

transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than $5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.

(3) Paragraph (1) shall not apply to—

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that—

(i) is manually operated by bolt, pump, lever, or slide action;

(ii) has been rendered permanently inoperable; or

(iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine.

The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect.

(4) Paragraph (1) shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Attorney General.

(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection.

(3) This subsection shall not apply to—

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for

purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Attorney General.

(4) If a person charged with violating paragraph (1) asserts that paragraph (1) does not apply to such person because of paragraph (2) or (3), the Government shall have the burden of proof to show that such paragraph (1) applies to such person. The lack of a serial number as described in section 923(i) of this title shall be a presumption that the large capacity ammunition feeding device is not subject to the prohibition of possession in paragraph (1).

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition

with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas—

(1) Definitions.—In this subsection—

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver--

(A) Conditions for waiver.—Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition.—Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the

date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (G)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

[Appendix to § 922 omitted.]

APPENDIX C

18 U.S.C. § 924 (2000), as amended by, Pub. L. No. 108-174, § 1(2), 117 Stat. 2481 (2003).

Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter,shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the

provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922, shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that

if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or

dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in

order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(*l*), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or

the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(*l*), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 802 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.),

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)), travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(g) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of

State law unless such provision is inconsistent with any of the purposes of this subsection.

(i) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(j) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(k) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or

foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(*l*) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(m) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(n) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(*o*) Redesignated (n).

APPENDIX D

18 U.S.C. § 925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(2) The provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Attorney General of the Army pursuant to section 4308 of title 10 before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Attorney General of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such

members, and such members or clubs may receive a firearm or ammunition determined by the Attorney General of the Treasury to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Attorney General to be consistent with the provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), and other applicable Federal and State laws and published ordinances, the Attorney General may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

(5) For the purpose of paragraph (3) of this subsection, the term "United States" means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the

term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Attorney General shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1986 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Attorney General has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Attorney General shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

(e) Notwithstanding any other provision of this title, the Attorney General shall authorize the importation of, by any licensed importer, the following:

(1) All rifles and shotguns listed as curios or relics by the Attorney General pursuant to section 921(a)(13), and

(2) All handguns, listed as curios or relics by the Attorney General pursuant to section 921(a)(13), provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(f) The Attorney General shall not authorize, under subsection (d), the importation of any firearm the importation of which is prohibited by section 922(p).

APPENDIX E

18 U.S.C. § 926. Rules and regulations

(a) The Attorney General may prescribe only such rules and regulations as are necessary to carry out the provisions of this chapter, including—

(1) regulations providing that a person licensed under this chapter, when dealing with another person so licensed, shall provide such other licensed person a certified copy of this license;

(2) regulations providing for the issuance, at a reasonable cost, to a person licensed under this chapter, of certified copies of his license for use as provided under regulations issued under paragraph (1) of this subsection; and

(3) regulations providing for effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(8) or (g)(8) of section 922.

No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Attorney General's authority to inquire into the

disposition of any firearm in the course of a criminal investigation.

(b) The Attorney General shall give not less than ninety days public notice, and shall afford interested parties opportunity for hearing, before prescribing such rules and regulations.

(c) The Attorney General shall not prescribe rules or regulations that require purchasers of black powder under the exemption provided in section 845(a)(5) of this title to complete affidavits or forms attesting to that exemption.

APPENDIX F

27 C.F.R. 478.11

Meaning of terms

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Crime punishable by imprisonment for a term exceeding 1 year. Any Federal, State of foreign offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or (b) any state offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiciton in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for the purposes of the Act or this part, unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

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